

## § 682.213

## 34 CFR Ch. VI (7–1–10 Edition)

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by an agency of any State functioning as a secondary market or in any other circumstances approved by the Secretary, notes, or any interest in notes, may not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the FFEL programs as collateral for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the most recently prescribed special allowance under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the loan seller a warranty that—

(1) Covers future reductions by the Secretary or a guaranty agency in computing the amount of loss payable on default claims filed on the loans, if the reductions are attributable to an act, or failure to act, on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a FFEL loan shall, upon conviction thereof, be fined not more than \$10,000

or imprisoned not more than one year, or both.

(h) A school may, at its option, make available a list of recommended or suggested lenders, in print or any other medium or form, for use by the school's students or their parents provided that such list complies with the requirements in 34 CFR 601.10 and 668.14(a)(28).

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1097)

(Approved by the Office of Management and Budget under control number 1845–0020)

[57 FR 60323, Dec. 18, 1992, as amended at 72 FR 62002, Nov. 1, 2007; 74 FR 55664, Oct. 28, 2009]

### § 682.213 Prohibition against the use of the Rule of 78s.

For purposes of the calculations required by this part, a lender may not use the Rule of 78s to calculate the outstanding principal balance of a loan, except for a loan made to a borrower who entered repayment before June 26, 1987 and who was informed in the promissory note that interest on the loan would be calculated using the Rule of 78s. For those loans, the Rule of 78s must be used for the life of the loan.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 68 FR 75429, Dec. 31, 2003]

### § 682.214 Compliance with equal credit opportunity requirements.

In making a Stafford loan on which interest benefits are to be paid, a lender shall comply with the equal credit opportunity requirements of Regulation B (12 CFR part 202). With regard to Regulation B, the Secretary considers the Stafford loan program to be a credit-assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, under 12 CFR 202.8(d), the lender may request a loan applicant to disclose his or her marital status, income from alimony, child

support, and separate maintenance income, and spouse's financial resources.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1071-1087-2)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 64 FR 58965, Nov. 1, 1999]

**§ 682.215 Income-based repayment plan.**

(a) *Definitions.* As used in this section—

(1) *Adjusted gross income* (AGI) means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income.

(2) *Eligible loan* means any outstanding loan made to a borrower under the FFEL and Direct Loan programs except for a defaulted loan, a FFEL or Direct PLUS Loan made to a parent borrower, or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

- (i) Live with the borrower; and
- (ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(4) *Partial financial hardship* means a circumstance in which—

- (i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eli-

gible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

(5) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(b) *Repayment plan.* (1) A borrower may elect the income-based repayment plan only if the borrower has a partial financial hardship. The borrower's aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty line income applicable to the borrower's family size, divided by 12. The loan holder adjusts the calculated monthly payment if—

- (i) Except for borrowers provided for in paragraph (b)(1)(ii) of this section, the total amount of the borrower's eligible loans includes loans not held by the loan holder, in which case the loan holder determines the borrower's adjusted monthly payment by multiplying the calculated payment by the